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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ECHOSTAR SATELLITE LLC, et al.

Plaintiffs,

v.

FREETECH, INC and DOES 1-10,

Defendants.

Case No. 07-6124 (JW) (RS)

**NOTICE OF MOTION AND MOTION OF
THE ELECTRONIC FRONTIER
FOUNDATION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF AND TO
SHORTEN TIME**

Date: September 15, 2008

Time: 9:30 a.m.

Dept.: Courtroom 4, 5th Floor, San Jose

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND COUNSEL OF RECORD:

The Electronic Frontier Foundation (“EFF”) hereby moves for leave to file the accompanying *amicus curiae* brief in the above-captioned case in support of Defendant Freetech, Inc.’s motion for a protective order curtailing overbroad and intrusive third-party discovery sought by Plaintiffs in 17 subpoenas served on nonparty distributors. EFF also moves the Court for an order shortening time, so that this motion and the attached *amicus curiae* brief can be considered by the Court in ruling on Freetech’s motion for a protective order, currently set for hearing before Magistrate Judge Richard Seeborg on September 15, 2008. This motion is based upon this Notice of Motion and Motion and the accompanying Declaration of Fred von Lohmann.

1 EFF is a non-profit civil liberties organization working to protect free speech and privacy
2 rights in the online world. With more than 10,000 dues-paying members, EFF represents the
3 interests of technology users in both court cases and in broader policy debates surrounding the
4 application of law in the digital age, and publishes a comprehensive archive of digital civil liberties
5 information at one of the most linked-to web sites in the world, www.eff.org.

6 As part of its mission, EFF has filed several *amicus curiae* briefs to protect the privacy
7 interests of digital technology users targeted by overbroad discovery requests. For example, EFF
8 has served as counsel or *amicus curiae* in cases involving the privacy of users of Internet search
9 engines (*see Columbia Pictures Industries, Inc. v. Bunnell*, No. CV-06-01093-FMC (C.D. Cal.
10 filed June 22, 2007) (*amicus curiae* brief addressing discovery request that would require an
11 Internet search engine to create logs of user's search activities)), users of digital video recorders,
12 (*Paramount Pictures Corp. v. ReplayTV, Inc.*, No. CV-01-09358-FMC (C.D. Cal. filed May 13,
13 2002) (*amicus curiae* brief addressing discovery request aimed at disclosing television viewing
14 habits of owners of ReplayTV digital video recorders)), and anonymous contributors to Internet
15 discussion forums (*Doe v. 2themart.com, Inc.*, 140 F. Supp. 2d 1088 (W.D. Wash. 2001) (served as
16 counsel to resist discovery request aimed at revealing the identity of an anonymous speaker)). In
17 addition, EFF recently brought user privacy concerns to the attention of Viacom in connection with
18 discovery arising out of its ongoing copyright litigation against Internet video site YouTube. *See*
19 Letter from Viacom General Counsel Michael Fricklas to Kurt Opsahl, July 15, 2008¹ (addressing
20 discovery request that would have disclosed habits of YouTube users); John Boudreau, *YouTube,*
21 *Viacom Agree to Mask Viewership Data*, S.J. Mercury News, July 16, 2008.²

22 The pending discovery dispute in this case concerns not only the parties and their
23 commercial partners but also jeopardizes the privacy interests of individual purchasers of
24 Freetech's FTA receivers. EFF submits the attached *amicus curiae* brief in order to bring these
25 privacy concerns to the attention of the Court.

26
27 ¹ Available at <<http://www.eff.org/deeplinks/2008/07/viacom-letter-eff-re-google-youtube-data-privacy>>.

28 ² Available at <http://www.mercurynews.com/business/ci_9895989>.

1 Under Local Rule 7-2, motions must ordinarily be filed 35 days before the calendared
2 hearing. However, EFF's proposed *amicus* brief is submitted in support of a motion that was itself
3 filed exactly 35 days before it was calendared for hearing. Pursuant to Local Rule 6-3, in the
4 interests of efficiency and judicial economy, EFF respectfully moves this court to shorten the time
5 in which it may file the attached *amicus curiae* brief so that it will be heard on September 15, 2008,
6 along with the underlying motion that it supports.

7 The parties through counsel have been informed of the filing of EFF's *amicus curiae* brief.
8 Defendant has consented to the filing of the brief. Plaintiffs have declined to consent to the filing
9 of the brief.

10 For the foregoing reasons and based on the documents submitted herewith, EFF
11 respectfully requests that the Court grant the motion for leave to file the accompanying *amicus*
12 *curiae* brief and to shorten time.

13
14 DATED: August 15, 2008

15 By /s/

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